

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
EASTERN DIVISION

REGINALD DUNAHUE
ADC #106911

PLAINTIFF

v.

No. 2:18-cv-103-DPM-PSH

WENDY KELLEY, Director, Arkansas
Department of Correction, *et al.*

DEFENDANTS

ORDER

1. On *de novo* review, the Court partly adopts and partly declines the partial recommendation, *No* 70, and mostly overrules Dunahue's objections, *No* 73. FED. R. CIV. P. 72(b)(3).

2. The recommendation states that EAM18-866 was rejected as untimely. *No* 70 at 10. In responding to that grievance, Warden Andrews did state that the grievance "should have been rejected." *No* 7 at 21. But then he went on to address the merits of Dunahue's grievance. *Ibid.* Because the prison addressed the merits of this procedurally flawed grievance, the Court concludes that the claims in EAM18-866 are exhausted. *Hammett v. Cofield*, 681 F.3d 945, 947 (8th Cir. 2012). That slice of the partial recommendation is therefore declined. The Court adopts the rest of the recommendation.

3. Motions for summary judgment, *No* 45 & *No* 62, partly granted and partly denied. Dunahue's equal protection, retaliation, and access-

to-news claims are dismissed without prejudice, as are his due process claims against Kelley and Palmer. His Eighth Amendment claims proceed, as do his due process claims against Knott, Dycus, Reed, and Andrews.

So Ordered.

D.P. Marshall Jr.

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United States District Judge

16 May 2019